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9  
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 13 UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 T.P., a minor, by and through her guardian ad  
 16 litem, ANDREA CASTILLO; J.P., a minor, by  
 17 and through his guardian ad litem, ANDREA  
 18 CASTILLO; JOSE PEREZ, Sr., individually and  
 19 as personal representative of the Estate of Jose  
 20 Perez, Jr.; GRACIELA PEREZ, individually and  
 21 as personal representative of the Estate of Jose  
 22 Perez, Jr.,

23 Case No. CV 06-06009 CRB

24 **COMPLAINT FOR DAMAGES FOR  
 25 VIOLATION OF CIVIL RIGHTS.  
 26 JURY TRIAL DEMANDED**

27 Plaintiffs,

28 vs.

29 CITY OF SAN LEANDRO, a municipal  
 30 corporation; JOSEPH KITCHEN, in his official  
 31 capacity as Chief of Police for the CITY OF  
 32 SAN LEANDRO; N. CORTI, individually and  
 33 in his official capacity as a police officer for the  
 34 CITY OF SAN LEANDRO; T. DEGRANO,  
 35 individually and in his official capacity as a  
 36 police officer for the CITY OF SAN  
 37 LEANDRO; J. MOLETTIERI, individually and  
 38 in his official capacity as a police officer for the  
 39 CITY OF SAN LEANDRO; R. MCMANUS,  
 40 individually and in his official capacity as a  
 41 police officer for the CITY OF SAN  
 42 LEANDRO; T. OVERTON, individually and in  
 43 his official capacity as a police officer for the  
 44 CITY OF SAN LEANDRO; R. THOMPSON,  
 45 individually and in his official capacity as a  
 46 police officer for the CITY OF SAN  
 47 LEANDRO; F. GROVE, individually and in his  
 48 official capacity as a police officer for the  
 49 (caption continues on following page)

1 CITY OF SAN LEANDRO; J. TEIXEIRA,  
2 individually and in his official capacity as a  
3 police officer for the CITY OF SAN  
4 LEANDRO; M. NEMETH, individually and in  
5 his capacity as a police officer for the CITY OF  
6 SAN LEANDRO; M. MAREZ, individually and  
7 in his capacity as a police officer for the CITY  
8 OF SAN LEANDRO; DOES 1-25, inclusive,  
9 individually and in their capacities as police  
10 officers for the CITY OF SAN LEANDRO,

11 Defendants.  
12 /

## 13 JURISDICTION

14 1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction  
15 is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1333. The  
16 unlawful acts and practices alleged herein occurred in the County of San Mateo, California, which is  
17 within this judicial district.

## 18 PARTIES

19 2. Plaintiff T.P. ("T.P.") is the minor daughter of decedent Jose Perez, Jr., represented in  
20 this action by and through her mother and guardian ad litem ANDREA CASTILLO, and she is a  
21 resident of the County of Alameda, California.

22 3. Plaintiff J.P. ("J.P.") is the minor son of decedent Jose Perez, Jr., represented in this  
23 action by and through her mother and guardian ad litem ANDREA CASTILLO, and he is a resident  
24 of the County of Alameda, California.

25 4. Plaintiff JOSE PEREZ, Sr. ("PEREZ, Sr.") is a competent adult and is the father of  
26 decedent Jose Perez, Jr., and he is a resident of the County of Alameda. Plaintiff PEREZ, Sr. is the  
27 joint personal representative of the Estate of Jose Perez, Jr.

28 5. Plaintiff GRACIELA PEREZ ("PEREZ") is a competent adult and is the mother of  
decedent Jose Perez, Jr, and she is a resident of Alameda County. Plaintiff PEREZ is the joint  
personal representative of the Estate of Jose Perez, Jr.

1       6.     Defendant CITY OF SAN LEANDRO (“CITY”) is a municipal corporation, duly  
2 organized and existing under the laws of the State of California. The City operates under its authority  
3 the San Leandro Police Department.

4       7.     At all times mentioned herein, Defendant JOSEPH KITCHEN (“KITCHEN”) was  
5 employed by defendant CITY as Chief of Police for the CITY. He is being sued in his official  
6 capacity as Chief of Police for the CITY.

7       8.     At all times mentioned herein, Defendant N. CORTI (“CORTI”) was employed by  
8 defendant CITY as a police officer for the CITY. He is being sued individually and in his official  
9 capacity as a police officer for the CITY.

10      9.     At all times mentioned herein, Defendant T. DEGRANO (“DEGRANO”) was  
11 employed by defendant CITY as a police officer for the CITY. He is being sued individually and in  
12 his official capacity as a police officer for the CITY.

13      10.    At all times mentioned herein, Defendant J. MOLETTIERI (“MOLETTIERI”) was  
14 employed by defendant CITY as a police officer for the CITY. He is being sued individually and in  
15 his official capacity as a police officer for the CITY.

16      11.    At all times mentioned herein, Defendant R. McMANUS (“McMANUS”) was  
17 employed by defendant CITY as a police officer for the CITY. He is being sued individually and in  
18 his official capacity as a police officer for the CITY.

19      12.    At all times mentioned herein, Defendant T. OVERTON (“OVERTON”) was  
20 employed by defendant CITY as a police officer for the CITY. He is being sued individually and in  
21 his official capacity as a police officer for the CITY.

22      13.    At all times mentioned herein, Defendant R. THOMPSON (“THOMPSON”) was  
23 employed by defendant CITY as a police officer for the CITY. He is being sued individually and in  
24 his official capacity as a police officer for the CITY.

25      14.    At all times mentioned herein, Defendant F. GROVE (“GROVE”) was employed by  
26 defendant CITY as a police officer for the CITY. He is being sued individually and in his official  
27 capacity as a police officer for the CITY.

15. At all times mentioned herein, Defendant J. TEIXEIRA (“TEIXEIRA”) was employed by defendant CITY as a police officer for the CITY. He is being sued individually and in his official capacity as a police officer for the CITY.

16. At all times mentioned herein, Defendant M. NEMETH ("NEMETH") was employed by defendant CITY as a police officer for the CITY. He is being sued individually and in his official capacity as a police officer for the CITY.

17. At all times mentioned herein, Defendant M. MAREZ (“MAREZ”) was employed by defendant CITY as a police officer for the CITY. He is being sued individually and in his official capacity as a police officer for the CITY.

18. At all times mentioned herein, defendant officers DOES 1-25, inclusive, were employed by defendant CITY as a police officers. They are being sued individually and in their capacities as police officers for the CITY.

19. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each Defendant so named is responsible in some manner for the injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend their complaint to state the names and capacities of DOES 1 through 25, inclusive, when they have been ascertained.

20. In engaging in the conduct described herein, Defendant police officers acted under the color of law and in the course and scope of their employment with the City. In engaging in the conduct described herein, Defendant police officers exceeded the authority vested in them as police officers under the United States and California Constitutions and as police officers employed by Defendant CITY.

21. For state causes of action, Plaintiffs are required to comply with a statutory claim filing requirement. Plaintiffs have complied with all statutory filing requirements related to their Federal claims.

## STATEMENT OF FACTS

22. On October 20, 2005, decedent JOSE PEREZ visited his youngest daughter, minor plaintiff T.P., at Children's Hospital in Oakland. Minor plaintiff T.P. had been hospitalized with the

1 flu and diabetic complications since the preceding October 17th. Decedent PEREZ and his  
2 daughter's mother, Andrea Castillo, with whom decedent PEREZ had an on-and-off relationship,  
3 spent substantial amounts of time at Children's Hospital during the period of minor plaintiff T.P.'s  
4 hospitalization. Ms. Castillo is also the mother of decedent's son, minor plaintiff J.P.

5 23. Decedent possessed Ms. Castillo's house-keys when he left Children's hospital on the  
6 afternoon of October 20, 2005. After he went to Ms. Castillo's home, an apartment located at 540  
7 Callan Avenue, Ms. Castillo's daughter, who is unrelated to decedent, called the police, ostensibly  
8 because decedent violated a court order by coming to Ms. Castillo's home. Ms. Castillo's daughter  
9 purportedly told 911 dispatchers that decedent was acting bizarre and that he was talking to himself,  
10 but that decedent had not hurt anyone. Defendant Officers DEGRANO and CORTI responded to the  
11 call and arrived at the Callan Avenue residence. At the time of this incident, Defendant Officer  
12 CORTI was in Field Training. Defendant Officer DEGRANO was Defendant Officer CORTI's Field  
13 Training Officer ("FTO"). Defendant Officer MOLETTIERI arrived at the Callan Avenue residence  
14 as a cover unit at about the same time as Defendant Officers CORTI and DEGRANO. Plaintiffs  
15 allege that these Defendant Officers responded to investigate a potential violation of a restraining  
16 order prohibiting decedent from harassing Ms. Castillo and her daughter who was unrelated to  
17 decedent, as noted herein-above.

18 24. Decedent answered the door after Defendant Officers knocked. Decedent lucidly and  
19 correctly answered after Defendant Officers asked him his name. Decedent complied with Defendant  
20 Officers orders to step out of the apartment. Defendant Officers contend that decedent refused their  
21 orders for him to sit down after he stepped out of the apartment, and claim that he began to walk  
22 away from them. In apparent response to decedent allegedly walking away from the officers,  
23 Defendant Officer DEGRANO unholstered his Taser X-26 stun-gun. According to Defendant  
24 Officers, decedent fled from them after DEGRANO removed his Taser and ordered decedent "to his  
25 knees."

26 25. Decedent fled into a nearby Alameda County Fire Station, which had its overhead  
27 doors open and where several firefighters were present. Defendant Officers DEGRANO tackled  
28 decedent to the ground and applied a figure four leg-lock while Defendant Officer CORTI applied a

1 wrist lock to decedent. According to defendants, Defendant Officer CORTI also held his 26" asp in  
2 one hand as he applied the wrist lock to decedent. Defendants contend that decedent grabbed hold of  
3 Defendant Officer CORTI's asp, and Defendant Officer DEGRANO removed the air-cartridge from  
4 his Taser X-26 and applied the Taser in drive-stun mode to decedent's right hip, which required  
5 placing the Taser stun-gun directly against decedent's right hip. Plaintiffs contend that the Taser  
6 operates by sending an electrical charge through the body that overrides nerve impulses and causes  
7 involuntary muscle contraction. Nevertheless, Defendant Officers claimed in their police report that  
8 the Taser had "no effect" on decedent, who allegedly continued to struggle for Defendant Officer  
9 CORTI's asp. Defendant Officer DEGRANO then drive stunned decedent several more times in the  
10 abdomen. Defendant Officers claimed in their police report that none of these Taser applications had  
11 any effect upon decedent. Defendants Officer CORTI then used his elbow to strike decedent several  
12 times in the head. Defendants contend in their police report that throughout this use of force and  
13 electrical shock, decedent retained his grip on CORTI's asp.

14 26. According to Defendant Officers' police report, Defendant Officer MOLETTIERI  
15 arrived on the scene and was able to push decedent onto his side, which purportedly allowed  
16 Defendant Officer CORTI to regain control of his asp. Defendant Officers contend that decedent  
17 then attempted to stand, and Defendant Officer DEGRANO applied a downward elbow strike to  
18 decedent's right shoulder and forced him back down to the ground. The officers claim in their police  
19 report that decedent twisted into a seated position and began kicking at the officers. Defendant  
20 Officer DEGRANO admits that he struck decedent in the chest with a right-hand palm strike, and  
21 then applied a carotid restraint to decedent. It should be noted that decedent suffered fractured and  
22 bruised thyroid cartilage, likely the result of an improperly applied carotid restraint.

23 27. A paramedic who was present at the firehouse witnessed one of the officers apply a  
24 "chokehold", consisting of a looped arm around decedent's neck. The paramedic observed  
25 decedent's limbs begin to turn blue in the fingertips ("cyanotic"), saw that decedent was not  
26 breathing very well, and walked over to observe decedent to ascertain whether decedent was still  
27 breathing or even alive. The paramedic told the officers present that decedent was "turning black and  
28 blue. He's not breathing. You need to stop." Defendant Officer DEGRANO then released the carotid

1 hold and decedent made choking noises that indicated he was getting his air back. The paramedic  
2 observed that the “chokehold” was applied to decedent for about 30 seconds. According to the  
3 paramedic, decedent asked the officers, “Why are you guys arresting me?” The firefighter observed  
4 that decedent at this point looked normal. The paramedic did not want further involvement in the  
5 incident and he exited to a different room at the firehouse. Although he was no longer in the same  
6 room as decedent, the paramedic heard further sounds of tussling and heard decedent continuing to  
7 speak.

8 28. After Defendant Officer DEGRANO released the carotid restraint, which he told  
9 investigators was only applied for about 3 to 5 seconds, he grabbed one of decedent’s arms and  
10 Defendant Officer CORTI struck decedent in the back two times with a closed fist, according to the  
11 officers. The officers then handcuffed decedent and used their radios to inform dispatch that they had  
12 decedent in custody.

13 29. According to Defendants’ police report, decedent continued to fight while in a seated  
14 position after he was handcuffed, so Defendant Officers CORTI and DEGRANO held him down.  
15 Defendant Officer MC MANUS, a sergeant, arrived at the scene and allegedly helped to control  
16 decedent by standing on one ankle while Defendant Officer CORTI stood on the other ankle. At this  
17 time, Defendant Officer MC MANUS took the opportunity to observe decedent’s eyes, and  
18 determined that decedent was under the influence of a controlled substance. The officers then held  
19 decedent down on his back.

20 30. Defendant Officer OVERTON, a lieutenant, arrived at the scene and also noticed  
21 symptoms consistent with decedent being under the influence of a controlled substance. Defendants  
22 allege that decedent kicked Defendant Officer OVERTON. Defendant Officer DEGRANO then tased  
23 decedent again approximately three more times on the right lower torso. Defendant Officer CORTI  
24 retrieved a wrap restraint from Defendant Officer MC MANUS’s police vehicle, and Defendant  
25 Officers CORTI, MAREZ, and OVERTON placed the wrap on decedent’s legs, restricting decedent’s  
26 movements. Defendant Officers then placed decedent in Defendant Officer MAREZ’s police vehicle  
27 after tasing decedent again after he allegedly stiffened his body to resist being placed in the police  
28 vehicle. Decedent spoke continuously, repeatedly cursing and demanding to be let out of the car,

1 while he was in the back of the police vehicle which transported decedent to San Leandro Police City  
2 Jail.

3 31. Defendant Officer MCMANUS called ahead and asked that the jailers prepare cell  
4 number 1, and also asked that jailers be prepared outside the jail to assist in handling decedent.  
5 Defendant Officers GROVE, TEIXEIRA, and THOMPSON, who are jailors at the San Leandro  
6 Police City Jail, and Defendant Officer NEMETH were outside the jail to assist Defendant Officers  
7 who were transporting decedent. According to the officers' police report, decedent refused to exit the  
8 police vehicle when it arrived at the jail, Defendant Officers GROVE, TEIXEIRA, THOMPSON and  
9 CORTI removed decedent from the police vehicle.

10 32. The officers escorted decedent into the jail and the jailors attempted to remove his  
11 property. Decedent did not cooperate with the officers, and Defendant Officer DEGRANO pushed  
12 him against a plexi-glass window while Defendant Officer THOMPSON removed an earring from  
13 decedent's ear. The officers then transported decedent to cell number 1, where decedent was placed  
14 on his stomach. Decedent remained handcuffed and in the wrap restraint device. Defendant Officer  
15 TEIXEIRA removed decedent's shoes and socks and then began to remove the wrap restraint device.  
16 Defendant Officers NEMETH and THOMPSON held decedent's legs while Defendant Officer  
17 TEIXEIRA removed the wrap restraint device. Defendant Officer NEMETH tased decedent again in  
18 his exposed lower back as he controlled one leg. Again, Defendants contend in their police report  
19 that the taser had no effect on decedent.

20 33. Defendant Officer MCMANUS then tased decedent three more times in the back.  
21 Defendants contend that MCMANUS warned decedent each time before applying the taser.  
22 Defendant Officer DEGRANO used a cutting device to cut decedent's belt to remove decedent's  
23 pants. Defendants contend in their police report that decedent, who was handcuffed, grabbed  
24 Defendant Officer MCMANUS's taser, which allegedly caused Defendant Officer DEGRANO to  
25 taser decedent two more times, allegedly in the palm of one of decedent's hands. It is unclear, since  
26 decedent was handcuffed and allegedly had hold of Defendant Officer DEGRANO's taser, how  
27 Defendant Officer MCMANUS was able to taser decedent in the palm of either hand. According to  
28 the officers' police report, decedent suddenly went limp. Defendant Officers believed this was a ploy

1 by decedent, but decedent failed to react to the officers attempt to elicit a physical reaction.

2 Defendant Officer's could not locate any pulse on decedent and decedent was not breathing.

3 34. Defendant Officers' MCMANUS's and THOMPSON's CPR attempts did not revive  
4 decedent, who was transported by AMR paramedics to Mt. Eden hospital, where he was pronounced  
5 dead at 1938 hours.

6 35. An autopsy performed by the Alameda County Sheriff's Office Coroner Bureau noted  
7 the numerous blunt injuries and marks consistent with taser application to decedent's body, as well  
8 as a fracture of the right superior horn of the thyroid cartilage. In spite of evidence of 21 taser  
9 applications to decedent, the body weight of some defendant officers applied to decedent's torso, and  
10 a fracture to decedent's neck cartilage, the Alameda County Sheriff's Office Coroner determined that  
11 decedent died as a result of "methamphetamine intoxication associated with physical exertion."

12 36. Plaintiffs allege that, according to a training bulletin issued by the Taser manufacturer  
13 in 2005: "Repeated, prolonged, and/or continuous exposure(s) to the TASER electrical discharge  
14 may impair breathing and respiration, particularly when the probes are placed across the chest or  
15 diaphragm. Users should avoid prolonged, extended, uninterrupted discharges or extensive multiple  
16 discharges whenever practicable in order to minimize the potential for over-exertion or potential  
17 impairment of the ability to breathe over a protracted time period. Particularly when dealing with  
18 persons showing symptoms of excited delirium, use of the TASER devise should be combined with  
19 physical restraint techniques to minimize the total duration of the struggle and minimize the total  
20 duration of TASER devise stimulation. Excited delirium is a potentially fatal condition caused by a  
21 complex set of physiological conditions including over-exertion of the subject and inability for  
22 sufficient respiration to maintain normal blood chemistry. These subjects are at a significant and  
23 potentially fatal health risks from further prolonged exertion and/or impairment of breathing." (On  
24 page 2, item 8 of the training bulletin).

25 37. Plaintiffs allege that Defendant Officers failed to use the Taser stun gun in  
26 conformance with the guidelines issued by the Taser manufacturer. Defendant Officers used the  
27 Taser in an excessive manner, and used other forms of unreasonable force against decedent, as  
28 detailed herein, that resulted in a fracture of decedent's neck and restricted decedent's ability to

1 breathe, thereby causing his death by asphyxiation. As shown by the autopsy report, decedent was in  
 2 good physical health at the time of his death.

3 38. Plaintiffs allege that decedent Jose Perez, Jr.'s death was the result of excessive and  
 4 brutal force used against him by defendant officers.

5 39. Plaintiffs further allege that decedent's death was the proximate result of Defendant  
 6 CITY's failure to reasonably train their police officers in the proper and reasonable use of force and  
 7 the proper and reasonable use of taser stun-guns. Plaintiffs further allege that these substantial  
 8 failures reflect Defendant CITY's policies implicitly ratifying and/or authorizing the use of excessive  
 9 force by its police officers and the failure to reasonably train police officers employed by Defendant  
 10 CITY in the use of Taser stun-guns.

11 40. The killing of decedent Jose Perez, Jr. described herein was brutal, malicious, and  
 12 done without just provocation or cause, proximately causing Plaintiffs' injuries and resulting  
 13 damages.

14 **DAMAGES**

15 41. Plaintiffs were physically, mentally, emotionally and financially injured and damaged  
 16 as a proximate result of decedent Jose Perez, Jr.'s wrongful death, including, but not limited to, the  
 17 loss of decedent's familial relationships, comfort, protection, companionship, love, affection, solace,  
 18 and moral support. In addition to these damages, Plaintiffs are entitled to recover for the reasonable  
 19 value of funeral and burial expenses.

20 42. Plaintiffs are entitled to recover wrongful death damages pursuant to C.C.P. Sections  
 21 377.60 and 377.61 and Probate Code Section 6402(b). Additionally, Plaintiffs are entitled to the  
 22 reasonable value of funeral and burial expenses pursuant to C.C.P. Sections 377.60 and 377.61.

23 43. Pursuant to C.C.P. Sections 377.30, 377.32, and 377.34, plaintiffs are further entitled to  
 24 recover for damages incurred by decedent before he died as the result of being assaulted and battered,  
 25 for deprivation without due process of decedent's right to life, and to any penalties or punitive  
 26 damages to which decedent would have been entitled to recover, had he lived. These damages do not  
 27 include damages incurred by decedent consisting of pain, suffering, and disfigurement prior to  
 28 decedent's death.

44. As a further direct and proximate result of the negligence, excessive force and deliberate indifference of defendants, and each of them, Plaintiffs have been deprived of decedent's financial support.

45. The conduct of the defendant officers was malicious, wanton, and oppressive. Plaintiffs, as decedent's successors in interest, are therefore entitled to an award of punitive damages against said individual defendants.

46. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights, and the rights of decedent, under the law. Plaintiffs are therefore entitled to recover all attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code section 1988.

**FIRST CAUSE OF ACTION**  
(Wrongful Death 42 U.S.C. Section 1983)

47. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 46 of this Complaint.

48. Defendants acted under color of law by killing decedent without lawful justification and subjecting decedent to excessive force thereby depriving Plaintiffs and the decedent of certain constitutionally protected rights, including, but not limited to:

- a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution;
- b. The right not to be deprived of life or liberty without due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;
- c. The right to be free from the use of excessive force by police officers, which is guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;
- d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution; and/or,

1 e. The right to be free from interference within the zone of privacy, as protected by the  
2 Fourth and Ninth Amendments to the United States Constitution;  
3  
4 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

5  
6 **SECOND CAUSE OF ACTION**  
7 (Violations of Plaintiffs' civil rights to familial relationship - 42 U.S.C. section 1983)

8 49. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through  
9 48 of this Complaint.

10 50. Defendants, acting under color of state law, and without due process of law deprived  
11 Plaintiffs of their right to a familial relationship by seizing decedent by use of unreasonable,  
12 unjustified and deadly force and violence, causing injuries which resulted in decedent's death, all  
13 without provocation and did attempt to conceal their excessive use of force and hide the true cause of  
14 decedent's demise to deprive Plaintiffs of their right to seek redress, all in violation of rights,  
15 privileges, and immunities secured by the First, Fourth, and Fourteenth Amendments to the United  
16 States Constitution.

17  
18 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

19  
20  
21 **THIRD CAUSE OF ACTION**  
22 (*Monell* - 42 U.S.C. section 1983)

23 51. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through  
24 50 of this Complaint.

25 52. Plaintiffs are informed and believe and thereon allege that high ranking CITY OF  
26 SAN LEANDRO officials, including high ranking police supervisors such as Defendant KITCHEN,  
27 DOES 11 through 25, and/or each of them, knew and/or reasonably should have known about the  
28

1 proper and reasonable use of force and the proper and reasonable use of the Taser stun gun, that  
2 misuse or abuse of the Taser stun gun can cause death, and the potential danger for misuse or abuse  
3 of the use of force and of the Taser stun gun by Defendant Officers DEGRANO, MCMANUS,  
4 NEMETH and DOES 1-10, and/or each of them.  
5

6 53. Despite having such notice, Plaintiffs are informed and believe and thereon allege that  
7 Defendants KITCHEN, DOES 11-25, and/or each of them, approved, ratified, condoned, encouraged,  
8 sought to cover up, and/or tacitly authorized, the misuse or abuse of the use of force, the Taser stun  
9 gun, and/or civil rights violations by said officers.  
10

11 54. Plaintiffs are further informed and believe and thereon allege that as a result of the  
12 deliberate indifference, reckless and/or conscious disregard of the potential for the Taser stun gun to  
13 be misused and/or abused, to potentially cause death, and use of excessive force by Defendants  
14 DEGRANO, MCMANUS, NEMETH and DOES 1-10, and/or each of them, Defendant KITCHEN,  
15 DOES 11-25, and/or each of them, encouraged these officers to continue their course of misconduct,  
16 misuse and abuse of the Taser stun-gun, and caused these officers' lack of training, resulting in the  
17 violation of the Plaintiffs' rights as alleged herein.  
18

19 55. The aforementioned acts and/or omissions and/or deliberate indifference by high  
20 ranking CITY AND SAN LEANDRO officials, including high ranking CITY OF SAN LEADNRO  
21 Police Department supervisors, Defendants KITCHEN, DOES 11-25, and each of them resulted in  
22 the deprivation of Plaintiffs' constitutional rights including, but not limited to, the following:  
23  
24

25 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
26 and Fourteenth Amendments to the United States Constitution;  
27  
28

- 1 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by
- 2 the Fifth and Fourteenth Amendments to the United States Constitution;
- 3 c. The right to be free from the use of excessive force by police officers, which is
- 4 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States
- 5 Constitution;
- 6 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to
- 7 the United States Constitution; and/or,
- 8 e. The right to be free from interference within the zone of privacy, as protected by the
- 9 Fourth and Ninth Amendments to the United States Constitution;

10 56. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
 11 Amendments to the United States Constitution.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13

#### 14 FOURTH CAUSE OF ACTION

15 (Survival action: Violation of decedent's civil rights

16 42 U.S.C. section 1983)

17 (Plaintiffs PEREZ, Sr. and PEREZ as joint personal representatives of decedent)

18 57. Plaintiffs hereby reallege and incorporate by reference herein paragraphs 1 through 56  
 19 of this Complaint.

20 58. The foregoing claim for relief arose in decedent's favor, and decedent would have  
 21 been the Plaintiff with respect to this claim if he had lived.

22 59. Defendants acted under color of law in killing decedent without lawful justification  
 23 and subjecting decedent to excessive force, thereby depriving Plaintiffs and the decedent of certain  
 24 constitutionally protected rights, including, but not limited to:

- 1 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth
- 2 and Fourteenth Amendments to the United States Constitution;
- 3 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by
- 4 the Fifth and Fourteenth Amendments to the United States Constitution;
- 5 c. The right to be free from the use of excessive force by police officers, which is guaranteed
- 6 by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;
- 7 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to
- 8 the United States Constitution; and/or,
- 9 e. The right to be free from interference within the zone of privacy, as protected by the
- 10 Fourth and Ninth Amendments to the United States Constitution.

13 60. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
 14 Amendments to the United States Constitution.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 FIFTH CAUSE OF ACTION  
 18 (C.C.P. Section 377.60 and 377.61)  
 19 Wrongful Death- Negligence

(Plaintiffs T.P. and J.P. by and through their Guardian Ad Litem, ANDREA CASTILLO)

20 61. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 60 of this  
 21 Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton,  
 22 and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

23 62. Defendant CITY, by and through its agents and employees, Defendant Officers  
 24 CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA,  
 25 THOMPSON, NEMETH, and DOES 1-10, inclusive, negligent actions and/or negligent failure to act,  
 26 as set forth herein-above proximately caused the death of decedent JOSE PEREZ, Jr., on October 20,  
 27 2005.

63. As an actual and proximate result of said defendants' negligence, and the death of decedent, plaintiffs have sustained pecuniary loss resulting from the loss of comfort, society, attention, services, and support of their father, decedent, in an amount according to proof at trial.

64. As a further actual and proximate result of said defendants' negligence, plaintiffs have incurred funeral and burial expenses, in an amount according to proof at trial.

65. Pursuant to California C.C.P. Sections 377.60 and 377.61, plaintiff has brought this action, and claims damages from said defendants for the wrongful death of decedent, and the resulting injuries and damages.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

## SIXTH CAUSE OF ACTION

(Violation of Civil Code Section 51.7)

(Plaintiffs PEREZ, Sr. and PEREZ as joint personal representatives of decedent)

66. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 65 of this complaint.

67. Plaintiffs are informed and believe and thereon allege that the conduct of defendants CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, inclusive, as described herein, was motivated by racial prejudice against plaintiffs' decedent. Plaintiffs' decedent is and was readily recognizable as Hispanic-American. In engaging in such conduct, defendants violated plaintiffs' decedent's rights under California Civil Code Section 51.7 to be free from violence, or intimidation by threat of violence committed against him because of his race.

68. Under the provisions of California Civil Code Section 52(b), defendants are liable an additional \$25,000.00 for each violation of Civil Code Section 51.7 for punitive damages and for reasonable attorney's fees.

69. As a proximate result of defendants' wrongful conduct, plaintiffs suffered damages as hereinafter set forth.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

SEVENTH CAUSE OF ACTION  
(Violation of Civil Code Section 52.1)

(Plaintiffs PEREZ, Sr. and PEREZ as joint personal representatives of decedent)

70. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 69 of this Complaint.

71. The conduct of Defendants CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, inclusive, as described herein, acting in the course and scope of their employment for Defendant CITY, violated California Civil Code Section 52.1, in that through the wrongful assault and battery and killing of plaintiffs' decedent they interfered with plaintiffs' decedent's exercise and enjoyment of his civil rights.

72. As a direct and proximate result of defendants' violation of Civil Code Section 52.1, decedent suffered violation of his constitutional rights, and suffered damages as set forth herein.

73. Since this conduct occurred in the course and scope of their employment, defendant CITY is therefore liable to plaintiffs pursuant to respondeat superior.

74. Plaintiffs are entitled to injunctive relief and an award of their reasonable attorney's fees pursuant to Civil Code Section 52.1(h).

WHEREFORE, plaintiffs pray for relief, as hereinafter set forth.

## EIGHTH CAUSE OF ACTION (Assault and Battery)

(Plaintiffs PEREZ, Sr. and PEREZ as joint personal representatives of decedent)

75. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 74 of this Complaint.

76. Defendants CORTI, DEGRANO, MOLETTIERI, McMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, inclusive, placed plaintiffs' decedent in immediate fear of death and severe bodily harm by attacking and battering him without any just provocation or cause.

77. These defendants' conduct was neither privileged nor justified under statute or common law.

## NINTH CAUSE OF ACTION

### (Intentional Infliction of Emotional Distress)

(Plaintiffs PEREZ, Sr. and PEREZ as joint personal representatives of decedent)

78. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 77 of this Complaint.

79. The conduct of defendants CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, inclusive, as set forth herein, was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society. Defendants committed these extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon plaintiffs' decedent.

80. As a proximate result of defendants' willful, intentional and malicious conduct, plaintiffs' decedent suffered severe and extreme mental and emotional distress. Therefore, plaintiffs are entitled to an award of punitive damages as against said defendants. Plaintiffs have suffered damages as hereinafter set forth.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

**TENTH CAUSE OF ACTION  
(Negligent Infliction of Emotional Distress)**

81. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 80 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

82. The wrongful conduct of Defendants CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, inclusive, as set forth herein, constitutes negligent conduct done with conscious disregard for the rights of plaintiffs.

83. As a proximate result of defendants' negligent conduct, plaintiffs have suffered severe emotional and mental distress, having a traumatic effect on plaintiffs' emotional tranquility.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

**ELEVENTH CAUSE OF ACTION**  
(Negligent Hiring, Retention, Training, Supervision, and Discipline)

84. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 83 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

85. At all times herein mentioned, defendant CITY, by and through its supervisory employees and agents, KITCHEN, and DOES 11-25, inclusive, has and had a mandatory duty of care to properly and adequately hire, train, retain, supervise, and discipline its police officers so as to avoid unreasonable risk of harm to citizens. With deliberate indifference, CITY, KITCHEN, and DOES 11-25, inclusive, failed to take necessary, proper, or adequate measures in order to prevent the violation of plaintiff's rights and injury to said plaintiff. CITY, KITCHEN, and DOES 11-25,

inclusive, breached their duty of care to citizens in that CITY, KITCHEN, and DOES 11-25, inclusive, failed to adequately train its police officers, including Defendants CORTI, DEGRANO, MOLETTIERI, MCMANUS, OVERTON, MAREZ, GROVE, TEIXEIRA, THOMPSON, NEMETH, and DOES 1-10, in the proper and reasonable use of force, the proper and reasonable use of the Taser stun gun, the proper and reasonable making of arrests, and treating citizens in a manner that is not racially discriminatory, and/or failed to have adequate policies and procedures regarding the proper and reasonable use of force, the proper and reasonable use of the Taser stun gun, the proper and reasonable making of arrests, and treating citizens in a manner that is not racially discriminatory. This lack of adequate supervisorial training, and/or policies and procedures demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying the continuing use of excessive and unreasonable force by police officers employed by CITY, the continuing failure to properly and reasonably use the Taser stun gun, the continuing failure to make proper and reasonable arrests by police officers employed by CITY, and continuing racially discriminatory behavior towards citizens by police officers employed by the CITY.

86. As a proximate result of defendants CITY, KITCHEN, and DOES 11-25, inclusive's negligent conduct, plaintiffs suffered the wrongful death of their respective son and father, Jose Perez, Jr., severe emotional and mental distress, and injury having a traumatic effect on Plaintiffs' emotional tranquility, and they suffered damages.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

## JURY DEMAND

87 Plaintiffs hereby demand a jury trial in this action.

## PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages in a sum of \$10,000,000.00;
2. For special damages in a sum according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For injunctive relief enjoining Defendant CITY OF SAN LEANDRO from authorizing, allowing, or ratifying the practice by any police officer employee of Defendant CITY from using excessive and unreasonable force against persons, including misuse and abuse of the Taser stun-gun, pursuant to California Civil Code Section 52.1;
6. For violation of California Civil Code Sections 52 and 52.1, statutory damages, and reasonable attorney's fees;
7. For violation of California Civil Code Section 51.7 pursuant to California Civil Code Section 52(b), punitive damages against Defendant police officers, \$25,000.00 for each offense and reasonable attorney's fees;
8. For injunctive relief;
9. For cost of suit herein incurred; and
10. For such other and further relief as the Court deems just and proper.

19 Dated: September 25, 2006

**The Law Offices of John L. Burris**

21 /s/ John L. Burris  
22 John L. Burris  
23 Attorney for Plaintiff  
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